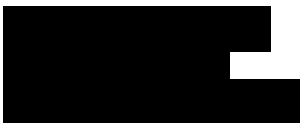


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2013-10283
Issue No.: 2009
Case No.:
Hearing Date: February 27, 2013
County: Bay

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon Claimant's request for a hearing made pursuant to Michigan Compiled Laws 400.9 and 400.37, which govern the administrative hearing and appeal process. After due notice, a telephone hearing was commenced on February 27, 2013, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Family Independence Manager

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. The new evidence was forwarded to the State Hearing Review Team ("SHRT") for consideration. On May 31, 2013, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medicaid and retroactive Medical Assistance (Retro/MA)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) On June 12, 2012, Claimant applied for MA and Retro-MA.
- (2) On October 25, 2012, the Medical Review Team denied Claimant's application indicating Claimant was capable of performing other work. (Depart Ex. A, pp 1-2).
- (3) On October 29, 2012, the department caseworker sent Claimant notice that MA/Retro-MA had been denied.

- (4) On November 9, 2012, Claimant filed a request for a hearing to contest the department's negative MA/Retro-MA action.
- (5) On January 3, 2013, the State Hearing Review Team again denied Claimant's application indicating that Claimant was capable of performing a wide range of light work. (Depart Ex. B, pp 1-2).
- (6) Claimant has a history of fibromyalgia, multiple foot surgeries, acute severe back pain, polyarthritis, chronic dizziness, carpal tunnel syndrome, hepatitis C, possible muscular dystrophy and chronic fatigue.
- (7) On August 8, 2012, Claimant went to the emergency department complaining of chest pain. She looked in acute distress. She had pain in the costovertebral area that radiates along the rib distribution. She was diagnosed with thoracic myositis with bronchitis. Her chest x-ray was negative. She was prescribed Zithromax, Naprosyn and Norflex and discharged. (Depart Ex. D, pp 38-39).
- (8) On September 6, 2012, Claimant underwent a medical examination on behalf of the [REDACTED] [REDACTED] [REDACTED]. Claimant's chief complaint was hepatitis C. She was diagnosed with hepatitis C 15 years ago. She states it causes her to suffer chronic fatigue, nausea, generalized weakness, generalized aches and pains, pain in her back and hips, feet and hands. She was diagnosed with fibromyalgia. She has plantar warts that cause difficulty walking. She has hammertoes and has had six surgeries to her feet to try to correct that. She also has problems with her memory. She states she has frequent falls. She complains of anxiety, mood swings, chronic fatigue and difficulty sleeping. She appeared to be in pain. She did not appear to have any cognitive defects. She was alert and oriented. She has an unstable gait and appears to have weakness in her legs. She was able to raise both arms above her head easily. Fine dexterity was normal. She had multiple trigger points in her back. She had trouble bending and touching her toes. She was not able to walk on heels and toes or in tandem because she was unsteady. Straight-leg raising was limited in both legs because of pain and limited to 10 degrees bilaterally. She was diagnosed with hepatitis C, chronic fatigue, generalized aches and pains, fibromyalgia, weakness in legs with unsteady gait and chronic dizziness. (Depart Ex. A, pp 9-11).
- (9) On January 21, 2013, Claimant saw her treating physician complaining of low back pain, bilateral foot pain and weight gain. She has a history of hammer toes with corrective surgery. She continues to have low back pain and her feet are very painful. Her back pain is worse from sitting or standing. She recently gained 50 pounds. She has not had physical therapy in 2 years. Her feet have been very painful and she has had knuckles removed as well as pins put in. She walks with a limp. (Depart Ex. D, pp 12-14).

- (10) On January 29, 2013, x-rays of Claimant's left foot were normal. X-rays of Claimant's right foot showed no significant abnormality in the right foot. (Depart Ex. A, pp 19-20)
- (11) On February 27, 2013, x-rays of Claimant's lumbar spine showed a normal appearing partial lumbosacral spine series. (Depart Ex. D, p 2).
- (12) On March 15, 2013, an MRI of Claimant's lumbar spine revealed no significant L5-S1 where there is bulging with a focal central slightly right paracentral broad-based herniation with some central and bilateral lateral recess stenosis. To a lesser degree there is some disc disease at L3-L4. (Depart Ex. D, pp 38-39).
- (13) On April 11, 2013, Claimant underwent a psychological evaluation by the [REDACTED] [REDACTED] [REDACTED]. The psychologist opined that Claimant was cooperative and attentive. Results of the mental status examination revealed no abnormalities in mental capacity. At this time she is struggling with depression related to her current medical problems and the resulting physical limitations. She has feelings of worthlessness because she is unable to work. Her ability to relate and interact with others, including coworkers and supervisors is impaired because of her depressed mood. Her ability to understand, recall, and complete tasks and expectations does not appear to be significantly impaired. Her ability to maintain concentration was fair. She appears able to deal with most normal workplace stressors. Diagnosis: Axis I: Adjustment Disorder with depressed mood; Axis III: Chronic pain, Hepatitis C; Axis IV: Financial problems, unemployment, social isolation; Axis V: GAF=65. (Depart Ex. C, pp 3-5).
- (14) Claimant is a 50 year old woman whose birthday is [REDACTED]. Claimant is 5'3" tall and weighs 200 lbs. Claimant has a high school level equivalent education. Claimant last worked in February, 2010.
- (15) Claimant had applied for Social Security disability at the time of the hearing.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department, (DHS or department), pursuant to MCL 400.10 *et seq.* and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a). The person claiming a physical or mental

disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and, (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4).

In Claimant's case, the ongoing back and foot pain as well as other non-exertional symptoms she describes are consistent with the objective medical evidence presented. Consequently, great weight and credibility must be given to her testimony in this regard.

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no,

the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).

3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

Claimant has not been employed since February, 2010; consequently, the analysis must move to Step 2.

In this case, Claimant has presented the required medical data and evidence necessary to support a finding that Claimant has significant physical and mental limitations upon her ability to perform basic work activities.

Medical evidence has clearly established that Claimant has an impairment (or combination of impairments) that has more than a minimal effect on Claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63.

In the third step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that Claimant's medical record will not support a finding that Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, Claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective medical findings, that Claimant cannot return to her past relevant work because the rigors of working as a machine operator are completely outside the scope of her physical and mental abilities given the medical evidence presented.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing other work. 20 CFR 416.920(f). This determination is based upon Claimant's:

- (1) residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once Claimant reaches Step 5 in the sequential review process, Claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that Claimant has the residual functional capacity for substantial gainful activity.

After careful review of Claimant's medical record and the Administrative Law Judge's personal interaction with Claimant at the hearing, this Administrative Law Judge finds that Claimant's exertional and non-exertional impairments render Claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P. Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). Based on Claimant's vocational profile (approaching advanced age, Claimant is 50, has a high school equivalent education and an unskilled work history), this Administrative Law Judge finds Claimant's MA/Retro-MA benefits are approved using Vocational Rule 201.12 as a guide. Consequently, the department's denial of her June 12, 2012, MA/Retro-MA application cannot be upheld.

DECISION AND ORDER

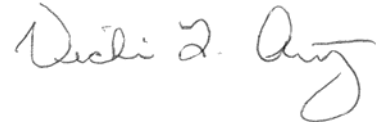
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining Claimant is not currently disabled for MA/Retro-MA eligibility purposes.

Accordingly, the department's decision is **REVERSED**, and it is ORDERED that:

1. The department shall process Claimant's June 12, 2012, MA/Retro-MA application, and shall award her all the benefits she may be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.

2. The department shall review Claimant's medical condition for improvement in June, 2014, unless her Social Security Administration disability status is approved by that time.
3. The department shall obtain updated medical evidence from Claimant's treating physicians, physical therapists, pain clinic notes, etc. regarding her continued treatment, progress and prognosis at review.

It is SO ORDERED.



Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: June 17, 2013

Date Mailed: June 18, 2013

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

2013-10283/VLA

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

VLA/las

cc:

